

AG Contract No.: KR04-1400TRN
ADOT ECS File No.: JPA 04-109
Project No.: CM-SCT-0(015)X
Project: Scottsdale Rd – Design ITS Project
Section: Pima Freeway to Indian School Rd
TRACS No.: SS577 03D
Budget Source Item No.: N/A

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF SCOTTSDALE

THIS AGREEMENT is entered into 6th January, 2005, pursuant to Arizona Revised Statutes, § 11-951 through § 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF SCOTTSDALE, ARIZONA, acting by and through its MAYOR and CITY COUNCIL (the "City")

I. RECITALS

1. The State is empowered by Arizona Revised Statutes § 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.
2. The City is empowered by Arizona Revised Statutes § 48-572 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.
3. Congress has authorized appropriations for, but not limited to, the design of streets and primary, feeder and farm-to-market roads; the replacement of bridges; the elimination of roadside obstacles; and the application of pavement markings.
4. A project within the boundary of the City has been selected by the City and has been submitted to the State and Federal Highway Administration (FHWA) for their approval.
5. The City, in order to obtain federal funds for the design of the project, is willing to provide City funds to match federal funds in the ratio required or as finally fixed and determined by the City and FHWA.
6. The only interest of the State in the project is in the acquisition of federal funds for the use and benefit of the City by reason of federal law and regulations under which funds for the project are authorized to be expended.

NO. 27292
Filed with the Secretary of State
Date Filed: 01/06/05

Janice K. Brewer
Secretary of State

By: Vicky D. Graenewald

7. The work encompassed in this Agreement is the design of smart corridor traffic control system on Scottsdale Road from Pima Freeway to Indian School Road. The estimated costs are as follows:

TRACS No. SS577 03D

Total Estimated Design Cost	\$410,000.00
Federal Aid Funds @ 94.3% of \$400,000.00(capped)	\$377,200.00
City Funds @ 5.7% of \$400,000.00 (capped)	\$ 22,800.00
Estimated ADOT PE Review Cost	<u>\$ 10,000.00</u>
Estimated Total City Funds	\$ 32,800.00

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The City will:

a. Invoice the State for federal funds for design work addressed under this Agreement at 94.3% of the project cost capped at \$400,000.00

b. Provide any required preliminary engineering and planning studies, the environmental analysis and design of the project.

c. Agree that the cost of the analysis and design work covered by this Agreement is to be borne by FHWA and the City, each in the proportion prescribed and determined by FHWA.

d. Agree to set aside funds in an amount equal to the difference between the total cost of the work provided for in this Agreement and the amount of federal aid received.

e. May request the State to be an authorized agent for the City, and all at City's expense, to perform certain work and prepare certain documents required by the FHWA to qualify certain highway, bridge and railroad grade crossing projects for and to receive federal funds. Such work may consist of, but is not specifically limited to, the review and approval of the City prepared environmental documents, the preparation of the analysis requirements for documentation of environmental categorical exclusion determinations; review of reports, design plans, maps, and specifications; geologic materials testing and analysis; right-of-way related activities (when specifically authorized by, for and on behalf of the City, and at no cost to the State) and such other related tasks essential to the achievement of the objectives of this Agreement

f. Should unforeseen conditions or circumstances increase the cost of said work such that a change in the extent or scope of the work called for in this Agreement become necessary, the City shall be obligated to incur and pay for said increased costs.

2. The State will:

a. Reimburse the City with federal funds for design work addressed under this Agreement at 94.3% of the project cost capped at \$400,000.00.

b. As required by the FHWA, provide design review of the project plans, studies and related documents, and when appropriate provide comments which will be incorporated into the design documents.

c. Enter into a Project Agreement with FHWA on behalf of the City covering the work encompassed in this Agreement and will request the maximum federal funds available. Should costs exceed the maximum federal funds available, it is understood and agreed that the City will be responsible for any overage.

d. Should unforeseen conditions or circumstances increase the cost of said work such that a change in the extent or scope of the work called for in this Agreement become necessary, the State shall not be obligated to incur any expenditure in the project.

III. MISCELLANEOUS PROVISIONS

1. The State assumes no financial obligation or liability under this Agreement. The City, in regard to the City's relationship with the State only, assumes full responsibility for the design, plans, specifications, reports, the engineering in connection therewith, cost over-runs and claims. It is understood and agreed that any damages arising from carrying out, in any respect, the terms of this Agreement or any modification thereof, shall be solely the liability of the City and that to the extent permitted by law, the City hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, misrepresentation, directives, instruction or event arising out of the performance or nonperformance of any provisions of this Agreement by the State, any of its departments, agencies, officers and employees; and the City, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall be the City's responsibility in the event of any action, court costs, and expenses of litigation and attorneys' fees.

2. The cost of the design work covered by this Agreement is to be borne by FHWA and the City, each in the proportion prescribed or as fixed and determined by the FHWA as stipulated in this Agreement. Therefore, City agrees to furnish and provide the difference between the total cost of the work provided for in this Agreement and the amount of the federal aid received.

3. The terms, conditions and provisions of this Agreement shall remain in force and effect until completion of said project and related deposits or reimbursement.

4. This Agreement shall become effective upon filing with the Secretary of State.

5. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

6. The provisions of Arizona Revised Statutes § 35-214 are applicable to this Agreement.

7. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

8. Non-Availability of Funds. Every payment obligation of the State under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

9 In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

10. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 S. 17th Avenue, Mail Drop 616E
Phoenix, AZ 85007
FAX: (602) 712 7424

City of Scottsdale
City Manager
3939 Civic Center Blvd.
Scottsdale AZ 85251

11. Pursuant to Arizona revised Statutes § 11-952, (D), attached hereto and incorporated herein, is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this Agreement and that the Agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

CITY OF SCOTTSDALE

STATE OF ARIZONA

Department of Transportation

By

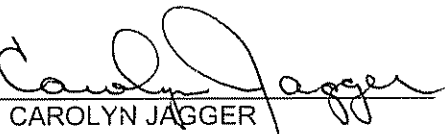

MARY MANROSS
Mayor

By


SUSAN TELLEZ
Contract Administrator

ATTEST

By


CAROLYN JAGGER
City Clerk

RESOLUTION NO. 6583

**A RESOLUTION OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA,
AUTHORIZING THE CITY TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT
WITH THE ARIZONA DEPARTMENT OF TRANSPORTATION FOR THE PURPOSE OF
RECEIVING FEDERAL HIGHWAY ADMINISTRATION GRANTS FOR INTELLIGENT
TRANSPORTATION SYSTEM IMPROVEMENTS.**

WHEREAS, the Arizona Revised Statutes 11-951, et. seq., provide that public agencies may enter into intergovernmental agreements for joint operation or cooperative action; and

WHEREAS, Section 3-1 of article 1 of the Charter of the City of Scottsdale authorizes the City to enter into intergovernmental agreements with various public agencies; and

WHEREAS, the City of Scottsdale desires to enter into an agreement with the Arizona Department of Transportation as the Federal Highway Administration grantor to receive grant number CM-SCT-0(015)X and grant number CM-SCT-0(014)X on the City's behalf;

NOW, THEREFORE, LET IT BE RESOLVED by the Council of the City of Scottsdale, Maricopa County, Arizona, as follows:

Section 1: Mary Manross, Mayor, is hereby authorized and directed to execute, on behalf of the City of Scottsdale, Intergovernmental Agreement Number 2004-151-COS and Intergovernmental Agreement Number 2004-152-COS with the Arizona Department of Transportation for the purpose of receiving federal grant funds for Intelligent Transportation System improvements.

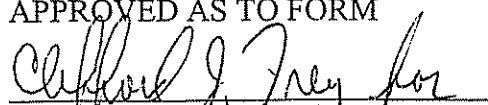
PASSED AND ADOPTED by the Council of the City of Scottsdale, Maricopa County, Arizona this 6th day of December, 2004.

By: 
MARY MANROSS, MAYOR

ATTEST:


Carolyn Jagger, City Clerk

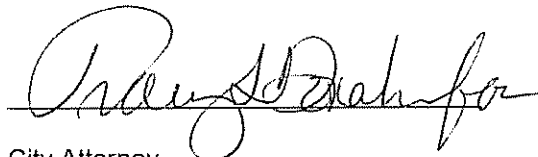
APPROVED AS TO FORM

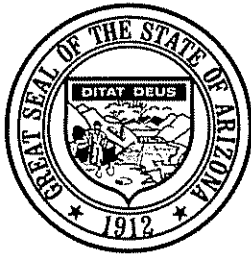

Joseph Bertoldo, City Attorney

APPROVAL OF THE CITY OF SCOTTSDALE ATTORNEY

I have reviewed the above referenced intergovernmental agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the CITY OF SCOTTSDALE, an agreement among public agencies which, has been reviewed pursuant to A R S. section 11-951 through 11-954 and declare this agreement to be in proper form and within the powers and authority granted to the CITY under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this 25th day of October, 2004.


City Attorney



**ATTORNEY GENERAL
CIVIL DIVISION
TRANSPORTATION SECTION**

MEMORANDUM

Jeffrey T. Murray
Assistant Attorney General

Direct: (602) 542-8859
Fax: (602) 542-3646

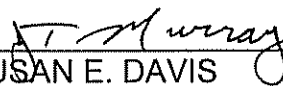
INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR04-1400TRN (**JPA 04-109**), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED December 29, 2004.

TERRY GODDARD
Attorney General



SUSAN E. DAVIS
Assistant Attorney General
Transportation Section

SED:dgr
Attachment
883412